



**Al Ott**

State Representative • 3rd Assembly District

## **Assembly Agriculture Committee**

### **MEMO**

**To: Members of the Assembly Agriculture Committee**

**From: Representative Al Ott, Chair**

**Date: January 24, 1997**

**The following clearinghouse rules have been referred to the Assembly Agriculture Committee:**

**Clearinghouse Rule 96-138**

**Relating to financial standards and security requirements for vegetable contractors. Submitted by the Department of Agriculture, Trade and Consumer Protection.**

**Clearinghouse Rule 96-139**

**Relating to potato late blight. Submitted by the Department of Agriculture, Trade and Consumer Protection.**

**Clearinghouse Rule 96-142**

**Relating to atrazine use restrictions. Submitted by the Department of Agriculture, Trade and Consumer Protection.**

**The deadline for action on these rules is February 22, 1997. If you would like a copy of any of the rules, please contact my office at 266-5831.**

**STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

**NOTICE OF SUBMISSION OF PROPOSED RULES TO  
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE**

**NOTICE IS HEREBY GIVEN**, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 96-138 to the presiding officer of each house of the legislature for standing committee review. The proposed rule repeals ATCP 98.01(6), 98.02(3)(a)3. and 98.20; rennumbers and amends ATCP 98.01(17), 98.02(1)(a) and 98.02(3)(a)4.; amends ch. ATCP 98(title), 98.01(1)(intro.), (7), (26), (27), (29), (32), (35), and (36), 98.02(1)(note), (3)(a)2., (3)(b), (4)(c) and (4)(f), 98.08(1)(a), (1)(b), (3)(b) and (3)(c), 98.10(3)(a), (b) and (c), 98.12(1), (2)(intro.), (b) and (c), (4), (9) and (12)(b), 98.18(1)(intro.), (2)(intro.), (3) and (6)(d), 98.22(2)(a) to (c) and (e)(intro.), 98.22(3), 98.24(2)(b) and (3) and 98.32(4); repeals and recreates ATCP 98.06, 98.12(3), 98.16(1), 98.18(4) and 98.22(2)(f); and creates ATCP 98.01(37)(note), 98.02(2)(f), 98.02(4)(dm), 98.12(1m), 98.18(6)(bm) and 98.32(2m), Wis. Admin. Code, relating to financial standards and security requirements for vegetable contractors.

Dated this 13~~4~~ day of January, 1997.

**STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION**

By   
Alan T. Tracy, Secretary



State of Wisconsin  
Tommy G. Thompson, Governor

## Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

2811 Agriculture Drive  
Madison, Wisconsin 53704-6777

PO Box 8911  
Madison, WI 53708-8911

DATE: January 10, 1997

TO: The Honorable Fred Risser, President  
Wisconsin State Senate

The Honorable Ben Brancel, Speaker  
Wisconsin State Assembly

FROM: Alan T. Tracy, Secretary

SUBJECT: Proposed Rules Related to Financial Standards and Security Requirements for  
Vegetable Contractors; Clearinghouse Rule 96-138

Pursuant to ss. 227.19(2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection hereby transmits the above rule for legislative committee review. We are enclosing three copies of the final draft rule, together with the following report. In accordance with s. 227.19(2), Stats., the department will publish a notice of this referral in the Wisconsin Administrative Register.

### **1. Overview.**

1995 Wisconsin Act 460, published on July 10, 1996, made significant changes to s. 100.03, Stats., the vegetable security law. Among other things, Act 460 increased the minimum financial standards for vegetable contractors. This rule amends the department's current rules under ATCP 98 to incorporate the statutory changes.

### **2. Background.**

Under the vegetable security law, s. 100.03, Stats., vegetable contractors must do all of the following:

- Register annually with the department.
- File financial statements with the department.
- File security with the department if they fail to meet minimum financial standards. The department currently holds nearly \$30 million in security under this program.

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1995 Wis. Act 460 makes the following changes to the vegetable security law:

- It exempts fruit from coverage under the law.
- It establishes higher minimum standards for vegetable contractors. Contractors who meet the prior standards, but fail to meet the new standards, must file security in the following amounts:
  - For the license year beginning February 1, 1997, 25% of the contractor's anticipated maximum liability to producers.
  - For the license year beginning February 1, 1998, 50% of the contractor's anticipated maximum liability to producers.
  - For subsequent license years, 75% of the contractor's anticipated maximum liability to producers.
- It changes the annual registration year expiration date, from March 31 to January 31.
- It clarifies current requirements related to year-end financial statements. Vegetable contractors who do not either make "payment on delivery" or file security with the department are currently required to file a year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year. Act 460 permits the department to extend the filing deadline by up to 30 days.
- It requires a vegetable contractor who wants to be licensed on the basis of its financial standing to file an interim financial statement with each annual application for registration renewal.
- It requires vegetable contractors to report, at the end of each registration year, whether they have met producer payment deadlines under the law.
- It prohibits a contractor from assessing a separate charge to producers to finance the cost of security filed the department.
- It eliminates food processing plant trusteeships as a security option.

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### **3. Rule Contents.**

#### **General**

This rule implements Act 460 and makes other minor changes to clarify the department's current rules under ch. ATPC 98, Wis. Adm. Code.

#### **Rule Coverage**

This rule applies to "vegetable contractors." A vegetable contractor is a processor or handler who buys vegetables grown in this state for use in food processing, or who contracts with a producer to grow vegetables in this state for use in food processing.

This rule does not apply to fruit contractors. Act 460 exempted fruit contractors from regulation under s. 100.03, Stats. This rule modifies current rules to reflect the new exemption.

#### **Registration Year**

Act 460 changed the registration year for vegetable contractors. The registration year now expires on January 31 of each year, rather than on March 31 as before. This rule modifies current rules to incorporate this change.

#### **Contractors Payments to Producers; General**

Current law specifies payment deadlines under vegetable procurement contracts:

- If a procurement contract does not specify a payment date in writing, the contractor must pay the producer by the 15th day of the month immediately following the month in which the producer tendered or delivered the vegetables.
- By January 31 of each registration year, a contractor must pay for all vegetables tendered or delivered prior to December 31 of that registration year unless a contract specifying a later payment date is approved by a vote of producers.
- If a producer tenders or delivers vegetables after December 31 of any registration year, the contractor must pay by the 15th day of the month following the month in which the vegetables were tendered or delivered, or by the 30th day after tender or delivery, whichever is later. (Act 460 clarifies this provision.)

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Under Act 460 and this rule, the department may not renew a contractor's registration unless, before February 5 of the registration year for which renewal is sought, the contractor files a sworn statement declaring that the contractor has paid in full all producer obligations which were due and payable in the preceding registration year ending January 31.

#### Annual Financial Statement

Under current law, contractors who do not make payment on delivery or file security with the department must file an annual financial statement with the department. (There are certain exceptions.) A contractor must file the year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year.

Under Act 460 and this rule:

- Year-end financial statements must be audited or reviewed by a CPA or public accountant. A year-end financial statement must be audited if the contractor incurs more than \$250,000 in producer obligations during the year to which the financial statement pertains.
- The department may, for good cause, extend the filing deadline for up to 30 days.

#### Interim Financial Statement to Accompany Renewal Application

Under 1995 Wis. Act 460 and this rule, contractors who are required to file year-end financial statements must also file interim financial statements when they apply for renewal of their annual registration certificate. A contractor must file an interim financial statement as of the quarter that ends closest to November 30.

#### Minimum Financial Standards

Under the prior law, a vegetable contractor was required to file security unless the contractor met both of the following financial standards:

- The contractor's ratio of current assets to current liabilities was at least 1.2 to 1.0.
- The contractor's total assets exceeded total liabilities.

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Act 460 changes these minimum financial standards. Under Act 460 and this rule, a contractor must now file security unless the contractor meets all of the following standards:

- The contractor's ratio of current assets to current liabilities must be at least 1.2 to 1.0 at the end of the contractor's fiscal year, and at least 1.0 to 1.0 at all other times.
- The contractor must have equity equal to at least 20% of total assets at the end of contractor's fiscal year, and at least 10% at all other times.

#### Security Required

Under current law, a contractor who fails to meet minimum financial standards must file security with the department unless the contractor pays cash "on delivery" for all vegetables procured from producers. The contractor must file security equivalent to at least 75% of the contractor's anticipated "maximum liability to producers" during the registration year.

Under Act 460 and this rule, a contractor who meets the minimum financial standards under the prior law, but fails to meet the new minimum financial standards under Act 460, must file "transitional" security in the following amounts for the following years:

- For the license year beginning February 1, 1997, 25% of the contractor's anticipated maximum liability to producers.
- For the license year beginning February 1, 1998, 50% of the contractor's anticipated maximum liability to producers.
- For subsequent license years, 75% of the contractor's anticipated maximum liability to producers.

Act 460 and this rule prohibit a contractor from assessing a separate deduction against producers to finance the cost of security filed with the department. This rule also clarifies current standards for calculating a contractor's "maximum liability to producers."

#### Food Processing Plant Trusteeships

Under prior law, a contractor who was also a food processing plant operator could, as an alternative to filing security with the department, enter into a food processing plant trusteeship.

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This allowed a contractor to set aside, in trust for producers, processed vegetables equivalent to not less than 30% of the raw vegetables received from producers. Act 460 repealed the option of a food processing plant trusteeship, which was difficult to administer and enforce. Consistent with Act 460, this rule repeals current rules related to food processing plant trusteeships.

#### Releasing Security

Under current rules, the department may release security only if one of the following applies:

- The contractor complies with minimum financial standards for at least 2 consecutive years.
- The contractor files alternative security.
- The contractor goes out of business after paying producers in full.
- The contractor demonstrates that the amount of security on file exceeds the amount required (e.g., because of a substantial appreciation in the value of the security or a substantial reduction in the contractor's maximum liability to producers).

This rule provides a different standard for the release of "transitional" security which a contractor is first required to file for the registration year beginning February 1, 1997, because the contractor fails to meet the new minimum standards under Act 460. Under this rule, the department may release that "transitional" security at any time on or before January 31, 1999 if the contractor files a single year-end financial statement that meets the new financial standards.

#### Notice to Producers; Financial Information

Under current rules, whenever a contractor offers a producer a procurement contract, the contractor must notify the producer of the basis on which the contractor is registered with the department. The contractor must give the notice in writing, in the exact form prescribed in the rule. The notice must indicate which of the following applies:

- The contractor must pay cash on delivery as a condition to registration.
- The contractor is registered on the basis of the contractor's financial statement.



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- The contractor is registered on the basis of security voluntarily filed with the department in lieu of a financial statement.
- The contractor is registered on the basis of security which the contractor is required to file because the contractor's financial statement does not meet minimum standards.

This rule modifies the current notice requirements to reflect law changes made by Act 460. This rule specifies a different notice for contractor's who must file "transitional" security because they fail to meet the new minimum financial standards under Act 460.

#### **4. Rulemaking Proceedings.**

On August 1, 1996, the Board of Agriculture, Trade and Consumer Protection approved draft rules for public hearing. The department held two hearings, in Wausau on September 11, 1996 and in Madison on September 12, 1996, to solicit comments on the draft rule. Only one person gave oral testimony. Mr. Paul Julius, Executive Director, Midwest Food Processors Association, testified in favor of the rule with some suggested changes. Those suggestions were as follows:

- Change the word "manufactured" in s. ATCP 98.12(9) to "packed or processed."
- Allow processors who must file an interim statement with their registration renewal to file an internally prepared financial statement or compiled financial statement, rather than a "reviewed" financial statement.
- Clarify the definition of "vegetable" in s. ATCP 98.01(37).
- Modify standards for release of security to make them more flexible. Julius suggested that security amounts should be subject to variation during the year, based on annual variations in grower liabilities. He noted that processors must file security equal to 75% of their maximum anticipated producer liability even during those times of the year when producer liabilities are much lower or nonexistent.

The department also received written comments from Stokely USA, Inc. addressing the issue of annual variations in security requirements.

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### **5. Rule Modifications After Public Hearings.**

The department made the following changes to the final draft rule:

- Changed s. ATPC 98.12(9) to read “vegetables processed,” instead of “vegetables manufactured.”
- Clarified the definition of “vegetable” under s. ATPC 98.01(37).
- Modified s. ATPC 98.12(1)(b), related to annual financial statements, per Rules Clearinghouse comment. This change clarifies that the statement must be an audited statement or, if the contractor procures less than \$250,000 in vegetables from producers each year, a reviewed financial statement.
- Added a note clarifying that contractors who are required to file an interim financial statement with their annual renewal may file an internally prepared or compiled financial statement.

Although the department did not change the rule language related to interim financial statements, the department will interpret the rule to permit interim statements (at the time of license renewal) which are internally prepared or compiled statements and not necessarily “reviewed” statements.

The department did not change the rule provisions related to security. The department may reconsider this issue in 1997, after the department has had adequate time to explore security options and obtain input from growers. The department does not wish to postpone action on this rule pending consideration of the complex security issue.

The department plans to review its vegetable trade practice rules under ATPC 101 in 1997. The department may also consolidate its vegetable security rules (ATPC 98) with rules related to vegetable trade practices (ATPC 101) and vegetable grading (ATPC 155). The department could revisit the security issue as part of that review and consolidation process. Revisiting the security issue during that process will allow the department to address this issue in an orderly manner before initiating any changes in this area.

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**6. Response to Rules Clearinghouse Comments.**

The Legislative Council Rules Clearinghouse reviewed the hearing draft and recommended several modifications to the proposed rule. (See Clearinghouse Comments attached.) The department incorporated these minor drafting changes in this final draft rule.

**7. Fiscal Estimate.**

This rule is not expected to have a significant fiscal impact on the department. For the most part, the rule merely incorporates statutory changes made in 1995 Wisconsin Act 460. A final fiscal estimate is attached.

**8. Small Business Analysis.**

This rule increases minimum financial standards, financial reporting requirements and security requirements for vegetable contractors as required by 1995 Wisconsin Act 460. The law changes may require some contractors to file security for the first time, but this rule softens the impact of this requirement by allowing the department to return security to a contractor who later files one annual financial statement which meets the higher minimum standards during the transitional period.

A final small business analysis ("final regulatory flexibility analysis") is attached.

This rule will provide increased protection for vegetable farmers, most of whom are "small businesses" as defined in s. 227.114(1)(a), Stats. Although vegetable contractors must meet higher financial standards and security requirements under this rule, most of those contractors are large vegetable processors who do not qualify as "small businesses."

Final Draft  
11/12/96

**PROPOSED ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING, AMENDING AND REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and  
2 consumer protection proposes the following order to repeal ATCP  
3 98.01(6), 98.02(3)(a)3. and 98.20; to renumber and amend ATCP  
4 98.01(17), 98.02(1)(a) and 98.02(3)(a)4.; to amend ch. ATCP  
5 98(title), 98.01(1)(intro.), (7), (26), (27), (29), (32), (35),  
6 and (36), 98.02(1)(note), (3)(a)2., (3)(b), (4)(c) and (4)(f),  
7 98.08(1)(a), (1)(b), (3)(b) and (3)(c), 98.10(3)(a), (b) and (c),  
8 98.12(1), (2)(intro.), (b) and (c), (4), (9) and (12)(b),  
9 98.18(1)(intro.), (2)(intro.), (3) and (6)(d), 98.22(2)(a) to (c)  
10 and (e)(intro.), 98.22(3), 98.24(2)(b) and (3) and 98.32(4); to  
11 repeal and recreate ATCP 98.06, 98.12(3), 98.16(1), 98.18(4) and  
12 98.22(2)(f); and to create ATCP 98.01(37)(note), 98.02(2)(f),  
13 98.02(4)(dm), 98.12(1m), 98.18(6)(bm) and 98.32(2m), Wis. Admin.  
14 Code; relating to financial standards and security requirements  
15 for vegetable contractors.

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**Analysis Prepared by the Department of Agriculture,  
Trade and Consumer Protection**

Statutory Authority: ss. 93.07(1) and 100.03(17), Stats.

Statutes Interpreted: s. 100.03, Stats.

The department of agriculture, trade and consumer protection administers Wisconsin's vegetable security law under s. 100.03, Stats. The law is designed to protect vegetable producers against catastrophic financial defaults by vegetable contractors, although it does not guaranty payments to producers. The department has adopted rules under ch. ATCP 98, Wis. Adm. Code, to implement the law.

1995 Wis. Act 460, published on July 10, 1996, made significant changes to the vegetable security law. Among other things, Act 460 increased the minimum financial standards for vegetable contractors. This rule amends the department's current rules under ATPC 98 to incorporate the statutory changes.

#### BACKGROUND

Under the vegetable security law, s. 100.03, Stats., vegetable contractors must do all of the following:

- Register annually with the department.
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1995 Wis. Act 460 makes the following changes to the vegetable security law:

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- It changes the annual registration year expiration date, from March 31 to January 31.
- It clarifies current requirements related to year-end financial statements. Vegetable contractors are currently required to file a year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year. Act 460 permits the department to extend the filing deadline by up to 30 days.

- It requires vegetable contractors to file an interim financial statement with each annual application for registration renewal.
- It requires vegetable contractors to report, at the end of each registration year, whether they have met producer payment deadlines under the law.
- It prohibits a contractor from assessing a separate charge to producers to finance the cost of security filed with the department.
- It eliminates food processing plant trusteeships as a security option.

## RULE CONTENTS

### General

This rule implements Act 460 and makes other minor changes to clarify the department's current rules under ch. ATCP 98, Wis. Adm. Code.

### Rule Coverage

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### Contractor Payments to Producers; General

Current law specifies payment deadlines under vegetable procurement contracts:

- If a procurement contract does not specify a payment date in writing, the contractor must pay the producer by the 15th day of the month immediately following the month in which the producer tendered or delivered the vegetables.

- By January 31 of each registration year, a contractor must pay for all vegetables tendered or delivered prior to December 31 of that registration year unless a contract specifying a later payment date is approved by a vote of producers.
- If a producer tenders or delivers vegetables after December 31 of any registration year, the contractor must pay by the 15th day of the month following the month in which the vegetables were tendered or delivered, or by the 30th day after tender or delivery, whichever is later. (Act 460 clarifies this provision.)

Under Act 460 and this rule, the department may not renew a contractor's registration unless, before February 5 of the registration year for which renewal is sought, the contractor files a sworn statement declaring that the contractor has paid in full all producer obligations which were due and payable in the preceding registration year ending January 31.

#### Annual Financial Statement

Under current law, a vegetable contractor must annually file a year-end financial statement with the department. (There are certain exceptions.) A contractor must file the year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year.

Under Act 460 and this rule:

- Year-end financial statements must be audited or reviewed by a CPA or public accountant. A year-end financial statement must be audited if the contractor incurs more than \$250,000 in producer obligations during the year to which the financial statement pertains.
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Under Act 460 and this rule, contractors who are required to file year-end financial statements must also file interim financial statements when they apply for renewal of their annual registration certificates. A contractor must file an interim financial statement as of the end of the quarter that ends closest to November 30.

### Minimum Financial Standards

Under prior law, a vegetable contractor was required to file security unless the contractor met both of the following financial standards:

- The contractor's ratio of current assets to current liabilities was at least 1.2 to 1.0.
- The contractor's total assets exceeded total liabilities.

Act 460 changes these minimum financial standards. Under Act 460 and this rule, a contractor must now file security unless the contractor meets all of the following standards:

- The contractor's ratio of current assets to current liabilities must be at least 1.2 to 1.0 at the end of the contractor's fiscal year, and at least 1.0 to 1.0 at all other times.
- The contractor's equity must be at least 20% of total assets at the end of the contractor's fiscal year, and at least 10% at all other times.

### Security Required

Under current law, a contractor who fails to meet minimum financial standards must file security with the department unless the contractor pays cash "on delivery" for all vegetables procured from producers. The contractor must file security equivalent to at least 75% of the contractor's anticipated "maximum liability to producers" during the registration year.

Under Act 460 and this rule, a contractor who meets the minimum financial standards under prior law, but fails to meet the new minimum financial standards under Act 460, must file "transitional" security in the following amounts for the following years:

- For the license year beginning February 1, 1997, 25% of the contractor's anticipated maximum liability to producers.
- For the license year beginning February 1, 1998, 50% of the contractor's anticipated maximum liability to producers.
- For subsequent license years, 75% of the contractor's anticipated maximum liability to producers.

Act 460 and this rule prohibit a contractor from assessing a separate deduction against producers to finance the cost of security filed with the department. This rule also clarifies



current standards for calculating a contractor's "maximum liability to producers."

#### Food Processing Plant Trusteeship

Under prior law, a contractor who was also a food processing plant operator could, as an alternative to filing security with the department, enter into a food processing plant trusteeship. This allowed a contractor to set aside, in trust for producers, processed vegetables equivalent to not less than 30% of the raw vegetables received from producers. Act 460 repealed the option of a food processing plant trusteeship, which was difficult to administer and enforce. Consistent with Act 460, this rule repeals current rules related to food processing plant trusteeships.

#### Releasing Security

Under current rules, the department may release security only if one of the following applies:

- The contractor complies with minimum financial standards for at least 2 consecutive years.
- The contractor files alternative security.
- The contractor goes out of business after paying producers in full.
- The contractor demonstrates that the amount of security on file exceeds the amount required (e.g., because of a substantial appreciation in the value of the security or a substantial reduction in the contractor's maximum liability to producers).

This rule provides a different standard for the release of "transitional" security which a contractor is first required to file for the registration year beginning February 1, 1997, because the contractor fails to meet the new minimum financial standards under Act 460. Under this rule, the department may release that "transitional" security at any time on or before January 31, 1999 if the contractor files a single year-end financial statement that meets the new minimum financial standards.

#### Notice to Producers; Financial Information

Under current rules, whenever a contractor offers a producer a procurement contract, the contractor must notify the producer of the basis on which the contractor is registered with the department. The contractor must give the notice in writing, in

the exact form prescribed in the rule. The notice must indicate which of the following applies:

- The contractor must pay cash on delivery as a condition to registration.
- The contractor is registered on the basis of the contractor's financial statement.
- The contractor is registered on the basis of security voluntarily filed with the department in lieu of a financial statement.
- The contractor is registered on the basis of security which the contractor is required to file because the contractor does not meet minimum financial standards.

This rule modifies the current notice requirements to reflect law changes made by Act 460. This rule specifies a different notice for contractors who must file "transitional" security because they fail to meet the new minimum financial standards under Act 460.

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SECTION 1. Chapter ATCP 98 (title) is amended to read:

CHAPTER ATCP 98

~~FRUIT AND~~ VEGETABLE CONTRACTORS; SECURITY REQUIREMENTS

SECTION 2. ATCP 98.01(1)(intro.) is amended to read:

ATCP 98.01(1)(intro.) "Affiliate" means any of the following persons or business entities that procures ~~farm~~ ~~products~~ vegetables for use by an operator:

SECTION 3. ATCP 98.01(6) is repealed.

SECTION 4. ATCP 98.01(7) is amended to read:

ATCP 98.01(7) "Contractor" means a person who buys ~~fruits~~ ~~or~~ vegetables grown in this state from a producer, or who contracts with a producer to grow ~~fruits or~~ vegetables in this state, regardless of whether the contractor is located in this

1 state or is engaged in food processing. "Contractor" does not  
2 include any of the following:

3 (a) A person who procures ~~fruits or~~ vegetables primarily  
4 for unprocessed fresh market use and is licensed under the  
5 federal perishable agricultural commodities act, 7 USC 499.

6 (b) A restaurant or retail food establishment that procures  
7 ~~fruits or~~ vegetables solely for retail sale at the restaurant or  
8 retail food establishment.

9 SECTION 5. ATCP 98.01(17) is renumbered ATCP 98.01(37) and  
10 amended to read:

11 ATCP 98.01(37) "~~Fruit or vegetable~~ Vegetable" means any  
12 ~~fruit or~~ vegetable that is grown or sold for use in food  
13 processing, whether or not the ~~fruit or~~ vegetable is actually  
14 processed as food. "~~Fruit or vegetable~~ Vegetable" includes, but  
15 is not limited to, green beans, kidney beans, lima beans, romano  
16 beans, wax beans, beets, cabbage, carrots, celery, cucumbers,  
17 onions, peas, potatoes, spinach, squash and sweet corn, but does  
18 not include grain, as defined in s. ATCP 99.01(23), or seed corn.

19 SECTION 6. ATCP 98.01(26), (27), (29), (32), (35) and (36)  
20 are amended to read:

21 ATCP 98.01(26) "Procurement contract" means an oral or  
22 written agreement between a contractor and a producer, under  
23 which the contractor buys ~~fruits or~~ vegetables grown in this  
24 state from the producer or contracts with the producer to grow  
25 ~~fruits or~~ vegetables in this state.

1           (27) "Producer" means a person who produces and sells  
2 ~~fruits or~~ vegetables or who grows ~~fruits or~~ vegetables under  
3 contract.

4           (29) "Producer obligation" means a ~~payment~~ net amount which  
5 a contractor owes to a producer, or to the producer's assignees  
6 or successors in interest, as payment under a procurement  
7 contract. "Producer obligation" includes a net amount owed for  
8 unharvested acreage.

9           (32) "Reviewed financial statement" means a financial  
10 statement, containing a sworn and notarized statement by the  
11 contractor that the financial statement is correct, that is  
12 reviewed according to generally accepted accounting principles by  
13 an independent certified public accountant, or by a public  
14 accountant who holds a certificate of authority under ch. 442,  
15 Stats., but that is not audited by the accountant.

16           (35) "Subsidiary" means a corporation or business entity  
17 that is owned, controlled or operated by an operator, and that  
18 procures ~~fruits or~~ vegetables for use by the operator.

19           (36) "Unharvested acreage" means ~~fruit or~~ vegetable  
20 acreage, subject to a procurement contract, which a contractor  
21 leaves unharvested for any reason. Unharvested acreage includes  
22 both of the following:

23           (a) Acreage that is suitable for processing, but not  
24 harvested.

25           (b) Acreage that is abandoned as being unsuitable for  
26 processing.

1           **SECTION 7.**   ATCP 98.01(37) (note) is created to read:

2           NOTE:   The definition of "grain" in s. ATCP 99.01(23) is  
3                   based on the definition in the United States grain  
4                   standards act (7 USC 75). Under the federal act, grain  
5                   is defined to include "corn" for which standards are  
6                   established. The standards require whole kernels of  
7                   specific species of corn. ATCP 99.01(23) then  
8                   clarifies that, under the established standards,  
9                   "grain" does not include the sweet corn subspecies.

10           **SECTION 8.**   ATCP 98.02(1) (a) is renumbered ATCP 98.02(1) and  
11           amended to read:

12           ATCP 98.02(1)   REGISTRATION CERTIFICATE REQUIRED. No person  
13           may operate as a contractor unless that person holds an annual  
14           registration certificate from the department. A registration  
15           certificate expires on ~~March~~ January 31 annually and is not  
16           transferable.

17           **SECTION 9.**   ATCP 98.02(1) (note) is amended to read:

18           NOTE:   See s. 100.03, Stats. If the operator of a food  
19                   processing plant procures ~~fruits or~~ vegetables from  
20                   producers, the operator must obtain both a food  
21                   processing plant license under s. 97.29, Stats. (see  
22                   chapter ATCP 70) and a registration certificate under  
23                   s. 100.03, Stats. (see this chapter).

24           **SECTION 10.**   ATCP 98.02(2) (f) is created to read:

25           ATCP 98.02(2) (f)   An interim statement if required under s.  
26           ATCP 98.12(1m).

27           **SECTION 11.**   ATCP 98.02(3) (a)2. is amended to read:

28           ATCP 98.02(3) (a)2.   A fee of one cent for each \$100 in total  
29           producer obligations reported under sub. (4) (a). The fee under  
30           this subdivision is not required if all graded ~~fruits and~~  
31           vegetables which the contractor procures from producers are  
32           graded by the department under contract with the contractor.

1           SECTION 12.   ATCP 98.02(3)(a)3. is repealed.

2           SECTION 13.   ATCP 98.02(3)(a)4. is renumbered ATCP  
3   98.02(3)(a)3. and amended to read:

4           98.02(3)(a)3.   ~~For the registration year beginning April 1,~~  
5   ~~1996, and for each registration year thereafter, a~~ A fee of 4.75  
6   cents for each \$100 in total producer obligations reported under  
7   sub. (4)(a).

8           SECTION 14. ATCP 98.02(3)(b) is amended to read:

9           ATCP 98.02(3)(b)   Surcharge for operating without a  
10   registration certificate.   1. An applicant under sub. (2) shall  
11   pay a surcharge of \$500 if the department determines that, within  
12   365 days prior to submitting the application, the applicant  
13   procured ~~fruits or~~ vegetables from producers without a  
14   registration certificate in violation of sub. (1).

15           2. An applicant required to pay a surcharge under subd. 1.  
16   shall also pay all fees, set forth in a statement from the  
17   department, that are still due for any registration year in  
18   which, according to the department, the applicant violated sub.  
19   (1).

20           3. Payment of the ~~license~~ registration fee surcharge and  
21   past fees under subds. 1. and 2. does not relieve the applicant  
22   of any other civil or criminal liability that results from the  
23   violation of sub. (1), but does not constitute evidence of any  
24   law violation.

25           SECTION 15. ATCP 98.02(4)(c) is amended to read:

1       ATCP 98.02(4)(c) The contractor's anticipated maximum  
2       liability to producers during the registration year for which  
3       application is made. If the contractor's anticipated maximum  
4       liability is zero because the contractor plans to make cash  
5       payment on delivery under every procurement contract or the  
6       contractor plans to procure all ~~farm products~~ vegetables from  
7       another contractor, the contractor shall so state. A contractor  
8       shall immediately notify the department in writing if, at any  
9       time during the registration year, the contractor has reason to  
10      believe that the contractor's maximum liability to producers will  
11      exceed the maximum liability previously anticipated and reported  
12      to the department.

13      **SECTION 16.** ATCP 98.02(4)(dm) is created to read:

14      ATCP 98.02(4)(dm) Whether, by the date of application, the  
15      contractor has paid all producer obligations that are due and  
16      payable during the registration year ending January 31.

17      **SECTION 17.** ATCP 98.02(4)(f) is amended to read:

18      ATCP 98.02(4)(f) Whether the contractor is a producer-owned  
19      cooperative or organization doing business on a cooperative  
20      pooling basis with its producer-owners and, if so, and whether  
21      the producer-owned cooperative or organization procures any  
22      ~~fruits or~~ vegetables from producers who are not its producer-  
23      owners.

24      **SECTION 18.** ATCP 98.06 is repealed and recreated to read:

25      **ATCP 98.06 REGISTRATION CONTINGENT ON TIMELY PAYMENT.** (1)

26      GENERAL. Except as provided under subs. (2) or (3), the

1 department may not renew a contractor's registration certificate  
2 for any registration year unless, prior to February 5 of that  
3 registration year, the contractor files a sworn and notarized  
4 statement, signed by the contractor or an officer of the  
5 contractor, showing that the contractor has paid in full all  
6 producer obligations that became due and payable during the  
7 preceding registration year ending January 31.

8 NOTE: A statement made in a renewal application under s.  
9 ATCP 98.02(4)(dm) satisfies the requirement of a  
10 statement under sub. (1) if, by the renewal application  
11 date, the contractor has paid in full all of the  
12 producer obligations that become due and payable during  
13 the registration year ending January 31. If not, the  
14 contractor may submit a supplementary statement under  
15 sub. (1) at any time prior to February 5.

16 (2) DISPUTED OBLIGATIONS. If a contractor disputes a  
17 producer obligation which is due and payable during a  
18 registration year ending January 31, the department may renew the  
19 contractor's registration certificate for the next registration  
20 year if the contractor deposits the disputed amount in escrow  
21 with the department or a court, pending resolution of the  
22 dispute.

23 (3) EXEMPTION FOR PRODUCER-OWNED ORGANIZATION. This  
24 section does not apply to a producer-owned cooperative or  
25 organization when doing business on a cooperative pooling basis  
26 with its producer owners.

27 **SECTION 19.** ATCP 98.08(1)(a), (1)(b), (3)(b) and (3)(c) are  
28 amended to read:

29 ATCP 98.08(1)(a) If a contractor harvests or accepts  
30 delivery of ~~fruits or~~ vegetables grown or delivered under the



1 contract, the contractor shall pay the producer the full amount  
2 owed for those ~~fruits or~~ vegetables on or before the 15th day of  
3 the month immediately following the month in which the contractor  
4 harvests or accepts delivery of those ~~fruits or~~ vegetables, or by  
5 an earlier date agreed upon between the parties.

6 (1) (b) If a contractor rejects ~~fruits or~~ vegetables  
7 tendered under the contract, or declines for any reason to  
8 harvest ~~fruits or~~ vegetables grown under the contract, the  
9 contractor shall pay the producer the full amount, if any, which  
10 the contractor owes under the contract for the rejected ~~fruits or~~  
11 vegetables or the unharvested acreage. Unless the parties agree  
12 on an earlier payment date, the contractor shall pay the producer  
13 by the 15th day of the month immediately following the month in  
14 which the producer tenders the ~~fruits or~~ vegetables, or in which  
15 the contractor notifies the producer that the acreage will not be  
16 harvested.

17 (3) (b) A written procurement contract may specify a payment  
18 date after January 31 for ~~fruits or~~ vegetables delivered on or  
19 before December 31 if, before the contract is offered to  
20 producers, it is approved by a vote of producers who had  
21 procurement contracts with the contractor for the same type of  
22 ~~fruit or~~ vegetable in the preceding registration year. To obtain  
23 advance approval of a contract under this paragraph, a contractor  
24 shall give written notice to all producers who had procurement  
25 contracts with the contractor for the same type of ~~fruit or~~  
26 vegetable in the preceding registration year. The notice shall

1 include a copy of the proposed contract and shall announce a  
2 meeting at which producers will be asked to vote on the proposed  
3 contract. The notice shall also include a mail ballot by which a  
4 producer may cast his or her vote without attending the meeting.  
5 Voting shall be by secret ballot. The proposed contract shall be  
6 approved by a majority of the producers who vote on the proposed  
7 contract. Before offering the approved contract to producers,  
8 the contractor shall file a sworn statement with the department,  
9 on a form provided by the department, certifying the results of  
10 the balloting.

11 (3)(c) If a producer tenders or delivers ~~fruits or~~  
12 vegetables to a contractor after December 31 of any registration  
13 year, the contractor shall pay the producer the full amount owed  
14 for those ~~fruits or~~ vegetables by the 15th day of the month  
15 following the month in which the ~~fruits or~~ vegetables were  
16 tendered or delivered, or within 30 days by the 30th day after  
17 tender or delivery, whichever occurs later.

18 **SECTION 20.** ATCP 98.10(3)(a), (b) and (c) are amended to  
19 read:

20 ATCP 98.10(3)(a) If the contractor harvests or accepts  
21 delivery of ~~fruits or~~ vegetables grown or delivered under a  
22 procurement contract, and the ~~fruits or~~ vegetables will not be  
23 graded, the contractor shall make full cash payment for those  
24 ~~fruits and~~ vegetables when the contractor harvests or accepts  
25 delivery of those ~~fruits or~~ vegetables.

1 (b) If the contractor harvests or accepts delivery of  
2 ~~fruits or~~ vegetables grown or delivered under a procurement  
3 contract, and the ~~fruits or~~ vegetables will be graded, the  
4 contractor shall make full cash payment for those ~~fruits and~~  
5 vegetables within 72 hours after the contractor harvests or  
6 accepts delivery of those ~~fruits or~~ vegetables.

7 (c) If the contractor rejects delivery of ~~fruits or~~  
8 vegetables which the producer tenders under the contract, or  
9 notifies the producer that contract acreage will not be harvested  
10 for any reason, the contractor shall pay the producer the full  
11 amount, if any, which the contractor owes the producer under the  
12 contract for the rejected ~~fruits or~~ vegetables or the unharvested  
13 acreage. If payment is owed, the contractor shall make full cash  
14 payment when the producer tenders the ~~fruits or~~ vegetables or the  
15 contractor notifies the producer that the acreage will not be  
16 harvested.

17 **SECTION 21.** ATCP 98.12(1) is amended to read:

18 ATCP 98.12(1) YEAR-END FINANCIAL STATEMENT. (a) Except as  
19 provided under sub. (2), every contractor shall annually file  
20 with the department a year-end financial statement ~~with the~~  
21 ~~department for each of~~ covering the contractor's last completed  
22 fiscal years year. ~~A~~ The contractor shall file the year-end  
23 financial statement ~~shall be filed, for each fiscal year, by the~~  
24 15th day of the fourth month following the close of ~~that the~~  
25 contractor's fiscal year. The department may, for cause, extend  
26 the filing deadline for up to 30 days.

1 (b) A year-end financial statement under par. (a) shall be  
2 an audited financial statement, except that if a contractor  
3 ~~purchases~~ procures less than \$250,000 of ~~fruits and~~ vegetables  
4 from producers each year, the contractor may file a ~~compiled or~~  
5 reviewed financial statement. ~~A compiled or reviewed financial~~  
6 ~~statement shall contain a notarized statement, signed and sworn~~  
7 ~~by the contractor or an officer of the contractor, stating that~~  
8 ~~the financial statement is correct.~~

9 **SECTION 22.** ATCP 98.12(1m) is created to read:

10 ATCP 98.12(1m) INTERIM STATEMENT. Except as provided under  
11 sub. (2), a contractor shall file, with the contractor's annual  
12 registration renewal application under s. ATCP 98.02, an interim  
13 statement showing the contractor's financial condition as of the  
14 end of the contractor's fiscal quarter that ends closest to  
15 November 30.

16 NOTE: An interim statement filed with the contractor's  
17 annual registration renewal application under sub. (1m)  
18 must be accompanied by a sworn and notarized statement,  
19 signed by the contractor, attesting that the financial  
20 statement is correct. The interim statement filed  
21 under this subsection may be a compiled financial  
22 statement, a reviewed financial statement, or a  
23 statement showing the contractor's financial condition  
24 prepared by the contractor.

25 **SECTION 23.** ATCP 98.12(2)(intro.), (b) and (c) are amended  
26 to read:

27 ATCP 98.12(2)(intro.) ~~Subsection (1) does~~ Subsections (1)  
28 and (1m) do not apply to any of the following:

1 (b) A contractor who files security with the department  
2 under s. ATCP 98.18, unless the contractor files security under  
3 s. ATCP 98.18(4)(b).

4 (c) A producer-owned cooperative or organization that  
5 procures ~~fruits and~~ vegetables solely on a cooperative pooling  
6 basis from its producer-owners, and that submits a sworn and  
7 notarized statement to that effect under s. ATCP 98.02(4)(f).

8 **SECTION 24.** ATCP 98.12(3) is repealed and recreated to  
9 read:

10 ATCP 98.12(3) **ADDITIONAL FINANCIAL STATEMENTS.** (a)  
11 Notwithstanding sub. (2), the department may require any  
12 contractor to do any of the following:

13 1. File a year-end financial statement or interim  
14 statement.

15 2. Supplement or clarify any financial statement filed with  
16 the department.

17 (b) A financial statement under par. (a) shall comply with  
18 all of the following requirements:

19 1. It shall contain the information specified by the  
20 department.

21 2. It shall contain a notarized statement, signed and sworn  
22 by the contractor or an officer of the contractor, stating that  
23 the financial statement is correct.

24 3. It shall be an audited or reviewed financial statement  
25 if the department so requires.

1       SECTION 25. ATCP 98.12(4), (9) and (12)(b) are amended to  
2 read:

3       ATCP 98.12(4) FINANCIAL STATEMENTS; ACCOUNTING PRINCIPLES.  
4 Every ~~compiled~~, reviewed or audited financial statement shall be  
5 prepared according to generally accepted accounting principles  
6 and this chapter.

7       (9) INVENTORY. A contractor's financial statement shall  
8 identify inventories of ~~farm products manufactured~~ vegetables  
9 processed and held for sale separately from other classes of  
10 inventory, such as materials and supplies. Inventories not in  
11 marketable or salable condition are not current assets.  
12 Financial statements shall describe the basis on which inventory  
13 values are determined.

14       (12)(b) A contractor's financial statement shall show ~~fruit~~  
15 ~~and~~ vegetable accounts separate from other trade accounts and  
16 shall identify amounts payable to producers and their assignees.

17       SECTION 26. ATCP 98.16(1) is repealed and recreated to  
18 read:

19       ATCP 98.16(1) REQUIREMENT. Except as provided under  
20 sub. (3), a contractor shall meet all of the following financial  
21 standards:

22       (a) The contractor's fiscal year-end ratio of current  
23 assets to current liabilities shall be at least 1.2 to 1.0. At  
24 all other times, the contractor's ratio of current assets to  
25 current liabilities shall be at least 1.0 to 1.0.

1 (b) The contractor's equity, at fiscal year-end, shall be  
2 equal to at least 20% of total assets. At all other times, the  
3 contractor's equity shall be equal to at least 10% of total  
4 assets.

5 **SECTION 27.** ATCP 98.18(1)(intro.), (2)(intro.) and (3) are  
6 amended to read:

7 ATCP 98.18(1)(intro.) REQUIREMENT. A contractor shall file  
8 security with the department under this section, ~~or enter into a~~  
9 ~~feed processing plant trusteeship under s. ATCP 98.20,~~ unless  
10 one or more of the following apply:

11 (2)(intro.) FORM OF SECURITY. Security filed with the  
12 department under this section is subject to approval by the  
13 department. ~~Except as provided under s. ATCP 98.20,~~ security  
14 Security shall be in one or more of the following forms:

15 (3) DEPARTMENT CUSTODY OF SECURITY. ~~Except as provided~~  
16 ~~under s. ATCP 98.20,~~ the The department or the department's agent  
17 shall maintain custody of all security filed by a contractor  
18 under this section. Security shall be payable to and held by the  
19 department for the benefit of producers.

20 **SECTION 28.** ATCP 98.18(4) is repealed and recreated to  
21 read:

22 ATCP 98.18(4) AMOUNT OF SECURITY. (a) Except as provided  
23 under par. (b), a contractor required to file security under this  
24 section shall file an amount of security which is at least equal  
25 to 75% of the anticipated maximum liability to producers which  
26 the contractor last reported under s. ATCP 98.02(4)(c).

1 (b) A contractor need only file the following amounts of  
2 security for the following registration years if the department  
3 finds, based on a financial statement filed with the department  
4 under s. ATCP 98.12, that the contractor's latest year-end ratio  
5 of current assets to current liabilities is at least 1.2 to 1.0  
6 and the contractor's total assets exceed total liabilities:

7 1. For the registration year beginning February 1, 1997,  
8 25% of the contractor's anticipated maximum liability to  
9 producers.

10 2. For the registration year beginning February 1, 1998,  
11 50% of the contractor's anticipated maximum liability to  
12 producers.

13 **SECTION 29.** ATCP 98.18(6)(bm) is created to read:

14 ATCP 98.18(6)(bm) The contractor has filed security under  
15 sub. (4)(b)1. for the registration year beginning February 1,  
16 1997, and the contractor subsequently files a year-end financial  
17 statement that meets the minimum financial standards under s.  
18 ATCP 98.16. This paragraph does not apply after January 31,  
19 1999.

20 **SECTION 30.** ATCP 98.18(6)(d) is amended to read:

21 ATCP 98.18(6)(d) The contractor is no longer in business  
22 and ~~certifies~~ submits a sworn affidavit certifying, to the  
23 department's satisfaction, that the contractor has paid all  
24 producer obligations in full.

25 **SECTION 31.** ATCP 98.20 is repealed.



1       SECTION 32.   ATCP 98.22(2)(a) to (c) and (e)(intro.) are  
2   amended to read:

3       ATCP 98.22(2)(a)   Every notice under sub. (1) shall contain  
4   the following verbatim statement conspicuously printed under the  
5   title:

6       "Under Wisconsin law, if a contractor procures ~~fruits or~~  
7   vegetables from producers for use in processing, the  
8   contractor must be registered with the Wisconsin Department  
9   of Agriculture, Trade and Consumer Protection, and must  
10   demonstrate a reasonable degree of financial responsibility.  
11   The law does not guarantee that contractors will pay  
12   producers for their ~~fruits or~~ vegetables. Every producer  
13   has some responsibility for determining the credit  
14   worthiness of the contractor for whom the producer grows  
15   ~~fruits or~~ vegetables. To qualify for registration, a  
16   contractor must do at least one of the following: (1) pay  
17   cash on delivery for all ~~fruits and~~ vegetables; (2) file  
18   financial statements with the department showing that the  
19   contractor meets certain minimum financial standards; or (3)  
20   file security with the department equal to at least 75% of  
21   the contractor's anticipated maximum liability to producers  
22   ~~or (4) set aside part of the contractor's processed~~  
23   ~~inventory in trust for producers.~~ (Some contractors may  
24   file only 25% security for the registration year beginning  
25   February 1, 1997, and 50% security for the registration year  
26   beginning February 1, 1998.)

27       (b) If a contractor is required, under s. ATCP 98.10(1), to  
28   pay cash on delivery for all ~~fruits and~~ vegetables, the notice  
29   under sub. (1) shall contain the following statement in addition  
30   to the statement under par. (a):

31       "(Name of contractor) is currently required, as a condition  
32   of registration, to pay cash on delivery for all ~~fruits or~~  
33   vegetables which we procure from producers. This also  
34   applies to any amounts owed for unharvested contract  
35   acreage. (See s. ATCP 98.10, Wis. Adm. Code)."

36       (c) If a contractor is ~~licensed~~ registered on the basis of  
37   the contractor's financial statement, the notice under sub. (1)

1 shall contain the following statement in addition to the  
2 statement under par. (a):

3 "(Name of contractor) is currently registered on the basis  
4 of its financial statement. Our most recent year-end  
5 financial statement meets the following minimum financial  
6 standards: (1) a current ratio of at least 1.20 to 1.00 at  
7 fiscal year-end, and at least 1.0 to 1.0 at all other times;  
8 and (2) ~~total assets in excess of total liabilities equity~~  
9 equal to at least 20% of total assets at fiscal year-end,  
10 and 10% at all other times."

11 (e) (intro.) ~~If~~ Except as provided under par. (f), if a  
12 contractor has filed security with the department under s. ATCP  
13 98.18 because the contractor's financial statement does not meet  
14 the minimum financial standards under s. ATCP 98.16, the notice  
15 under sub. (1) shall contain the following statement in addition  
16 to the statement under par. (a):

17 SECTION 33. ATCP 98.22(2)(f) is repealed and recreated to  
18 read:

19 ATCP 98.22(2)(f) If a contractor has filed security with  
20 the department under s. ATCP 98.18(4)(b), the notice under sub.  
21 (1) shall contain, in addition to the statement under par. (a):

22 1. The following statement for the registration year  
23 beginning February 1, 1997:

24 "(Name of contractor) has filed security with the department  
25 to secure payments to its producers because, although our  
26 year-end ratio of current assets to current liabilities is  
27 at least 1.2 to 1.0 and our total assets exceed total  
28 liabilities, our financial statement does not meet new  
29 minimum financial standards created by recent law changes.  
30 The amount of security is equal to 25% of the maximum amount  
31 which we expect to owe producers at any time during the  
32 coming year."

33 2. The following statement for the registration year  
34 beginning February 1, 1998:

1        "(Name of contractor) has filed security with the department  
2        to secure payments to its producers because, although our  
3        year-end ratio of current assets to current liabilities is  
4        at least 1.2 to 1.0 and our total assets exceed total  
5        liabilities, our financial statement does not meet new  
6        minimum financial standards created by recent law changes.  
7        The amount of security is equal to 50% of the maximum amount  
8        which we expect to owe producers at any time during the  
9        coming year."

10       SECTION 34.    ATPC 98.22(3) is amended to read:

11       ATPC 98.22(3)    EXEMPTION.    This section does not apply to a  
12       producer-owned cooperative or organization when that cooperative  
13       or organization procures ~~fruits and~~ vegetables on a cooperative  
14       pooling basis from its producer-owners.

15       SECTION 35.    ATPC 98.24(2)(b) and (3) are amended to read:

16       ATPC 98.24(2)(b)    By mailing a copy of the order to the  
17       contractor and to the ~~trustee or~~ surety, if any.

18       (3)    AUDIT; PROPOSED ORDER.    If the department initiates a  
19       default proceeding, the department shall audit producer claims  
20       filed with the department and shall issue a proposed order  
21       allowing or disallowing claims.    The proposed order shall be  
22       based on proposed finding of facts and conclusions of law which  
23       shall accompany the proposed order.    The department shall mail a  
24       copy of the proposed order to the contractor, to the ~~trustee or~~  
25       surety, if any, and to every producer who filed a timely producer  
26       claim in the proceeding.

27       SECTION 36.    ATPC 98.32(2m) is created to read:

28       ATPC 98.32(2m)    Deduct, from the amount paid or payable to  
29       any producer, any assessment that is designated for use in  
30       offsetting the cost of security filed under this chapter.

1        **SECTION 37.**    ATPC 98.32(4) is amended to read:

2        ATPC 98.32(4)    If the contractor is a producer-owned  
3        cooperative, procure ~~fruits or~~ vegetables from producers contrary  
4        to the contractor's statement under s. ATPC 98.02(4)(f).

5        **EFFECTIVE DATE.**    The rules contained in this order shall  
6        take effect on the first day of the month following publication  
7        in the Wisconsin administrative register, as provided under s.  
8        227.22(2)(intro.), Stats.

9  
10  
11       Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

12                                STATE OF WISCONSIN  
13                                DEPARTMENT OF AGRICULTURE,  
14                                TRADE AND CONSUMER PROTECTION  
15

16  
17                                By \_\_\_\_\_  
18    Alan T. Tracy, Secretary  
19  
20  
21  
22